

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:07-CR-32
V.)	(VARLAN/GUYTON)
)	
DOUGLAS V. WHISNANT,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. On July 30, 2008, this matter came before the Court for a hearing on the defendant's Second Motion for Leave to File Additional Motions [Doc. 55] and Second Motion to Continue Trial Date. [Doc. 56] Attorney J. Edgar Schmutzer appeared on behalf of the government. Attorney R. Alexander Brown appeared on behalf of the defendant, who was also present.

The defendant moves the Court to continue the trial in this matter scheduled for August 5, 2008. As grounds the defendant states that, because of recently discovered evidence, additional time is needed to prepare for trial. The defendant also moves the Court for leave to file out of time his motion to dismiss. For good cause shown, the defendant's motion for leave to file [Doc. 55] is hereby **GRANTED**. The Court will consider the defendant's motion to dismiss [Doc. 57] as if timely filed. The government shall have until and including August 8, 2008, to respond to the motion to dismiss. Additionally, the Court scheduled a hearing on the motion to dismiss for August 19, 2008, at 2:00 p.m. before the undersigned. After a response has been filed, should the parties

feel that a hearing on the motion is unnecessary, counsel are **DIRECTED** to advise chambers accordingly.

With respect to the defendant's motion to continue, the Court finds that the ends of justice served by a continuance outweigh the interest of the defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). Specifically, the Court finds that failure to grant a continuance under these circumstances would deny the defendant the reasonable time necessary for effective preparation for trial, resulting in a miscarriage of justice. See 18 U.S.C. § 3161(h)(8)(B)(i),(iv). The Court finds that additional time is needed: to perform additional investigation in light of the recently discovered evidence; for the Court to hear argument and rule on the motion to dismiss; for the District Court to rule on any objections to any Reports and Recommendation the Court will issue as to the motion to dismiss; and for both parties to then prepare for trial based upon the resolution of the motion to dismiss. The Court finds that this could not take place before the August 5, 2008, trial date, or in less than approximately three months. Therefore, the defendant's motion to continue [Doc. 56] is hereby **GRANTED** and the trial in this matter is hereby **CONTINUED** to **October 27, 2008**. The Court further finds that all time between the filing of the instant motions and the new trial date of October 27, 2008, is fully excludable time under the Speedy Trial Act. See 18 U.S.C. § 3161(h)(8)(A)-(B)(i) and (iv).

In summary, it is **ORDERED** that:

- (1) The defendant's motion for leave to file [Doc.55] is hereby **GRANTED**;
- (2) The defendant's motion to continue [Doc. 56] is hereby **GRANTED**;
- (3) The trial of this matter is reset to commence on **October 27, 2008, at 9:00 a.m.**, before the Honorable Thomas A. Varlan, United States District Judge;

(4) All time between the filing of the instant motions and the new trial date of **October 27, 2008**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;

(5) The government shall have until and including **August 8, 2008** to respond to the defendant's motion to dismiss [Doc. 57]; and

(6) A hearing on the motion to dismiss [Doc. 57] is hereby set for **August 19, 2008, at 2:00 p.m.** before the undersigned. After a response has been filed, should the parties feel that a hearing is unnecessary, counsel are **DIRECTED** to advise chambers accordingly.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge